

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOSE RUFINO MACIAS**

Claimant

VS.

**RITCHIE PAVING, INC.**

Respondent

Self Insured

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Docket No. 237,417

**ORDER**

Respondent requested review of the preliminary hearing Order dated October 29, 1998, entered by Administrative Law Judge John D. Clark.

**ISSUES**

The issues before the Appeals Board on this review are:

- (1) Did claimant sustain personal injury by accident that arose out of and in the course of his employment with respondent on the dates alleged?
- (2) Did claimant provide respondent with timely notice of accident?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record as it currently exists, and for purposes of preliminary hearing, the Appeals Board finds the ALJ's Order should be reversed.

Claimant worked for respondent as a cement finisher. Claimant only speaks Spanish. His supervisor speaks only English. Claimant testified he communicated with his supervisor through bilingual co-workers. On or about June 30, 1998, claimant injured his back while lifting a form weighing approximately 200 pounds. Claimant immediately began experiencing pain symptoms in his low back. These symptoms began from the occurrence of a sudden, traumatic event. Claimant reported this accident to a co-worker but did not report it to his supervisor and he did not ask his co-worker to report it to his supervisor. He continued working but with pain. Claimant testified his symptoms

worsened until August 13, 1998 when he asked a co-worker to tell his supervisor that he couldn't work anymore. Claimant sought medical treatment from respondent but was denied because of the late notice.

The Appeals Board finds claimant sustained personal injury by accident on or about June 30, 1998. Thereafter his ongoing symptoms worsened to the point where he felt he could no longer continue working. He then reported his accidental injury and sought medical treatment. What has not been proven, however, is whether the subsequent work caused an aggravation of his injury. Claimant's preliminary hearing testimony is inconsistent with the way claimant described how his injury happened to his supervisor on August 13, 1998.

Claimant testified at the preliminary hearing that he hurt himself a second time on August 13, 1998 and that is when he reported to his supervisor that he couldn't continue working and was in need of medical treatment. But claimant admits he only reported being injured in June. He did not report a subsequent aggravation and he did not report that he sustained a second injury on August 13. This notice on August 13, 1998, therefore, was for the June 30, 1998 accident.

Based upon the evidence as it presently exists, the Appeals Board finds that claimant has not established either that he suffered an aggravation each and every working day after June 30, 1998 or that he suffered a second accidental injury on August 13, 1998. The Appeals Board finds claimant has proven an accidental injury on June 30, 1998 that was caused by the work activities he was performing for respondent. That June 30, 1998 accidental injury, therefore, arose out of and in the course of claimant's employment with respondent.

The Appeals Board further finds, however, that claimant failed to provide respondent timely notice of injury by accident within ten days of the June 30, 1998 accident and has failed to establish just cause for this failure. Claimant admitted he was aware of the respondent's requirement to immediately report all accidents to his supervisor. Even though there was not a Spanish speaking supervisor on the job site, claimant could have reported his accident through a co-worker within ten days of June 30, 1998 like he did on August 13, 1998.

On August 13, 1998, claimant gave notice that related his back symptoms to a specific incident which occurred at work in June 1998. That notice was untimely under K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated October 29, 1998, should be, and hereby is, reversed and benefits are denied.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1999.

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**BOARD MEMBER**

c: Robert R. Lee, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director